ADDENDA,

TO THE

FIRST EDITION

OF THE

Rev^d. W. GILPIN's *Observations on Forest Scenery.*

A Friend of the author, diſſatisfied with ſome of his ſtrictures on the ancient conſtitution of the Engliſh government, and on the foreſt-law, in the firſt edition of his work*, ſent him the following remarks; which ſeemed to him ſo ingenious, that he deſired permiſſion to print them in the preſent edition.

A NEW light is ſuppoſed to have broken upon the European world in late times, after centuries of darkneſs following the deſtruction of the Roman empire; and it has been boldly aſſerted, that the inhabitants of England, having neither freedom, nor ſenſe to demand it, were ſlaves from the firſt entry of our Saxon anceſtors, till the overthrow of deſpotiſm by the republicans in the reign of Charles I. or perhaps till the revolution under William III. The author of Obſervations on Foreſt Scenery, ſeems in ſome degree to have given countenance to this opinion. He allows indeed, that there were "ſome traces

* Vol. II. p. 9. to 15.

of liberal ſentiment*" in the inſtitutions of the Saxon government; but intimates that from the moment the Normans appeared, all was deſpotiſm. Thoſe who will attentively conſider the Saxon inſtitutions, without prejudice, will diſcover, that thoſe inſtitutions are framed with a regard to equality of rights†, which will ſcarcely be found in any Greek or Roman code; and at the ſame time with an anxious attention to order and good government, and eſpecially to the preſervation of the public peace in a wild uncultivated country: that the influence of the Saxon eſtabliſhments ſtill pervades the whole ſyſtem of our government: that it has formed the happineſs of this country for a period of near a thouſand years; and, if experience of the paſt can enable us to judge of the future, will form it's happineſs through the courſe of ſucceeding ages, perhaps as long as the country itſelf ſhall endure. Ignorant, or ungrateful, we refuſe to our German progenitors the acknowledgment, that to their plain good ſenſe, their love of liberty, their love of order, and their love of juſtice, emerging from a ſtate of extreme rudeneſs, we owe almoſt all the bleſſings of the government we enjoy; whilſt a foreigner, obſerving us only from a diſtance and imperfectly, has traced our happineſs from it's true ſource, and juſtly exclaims, "Ce "beau ſyſtéme a été trouvé dans les bois." (Monteſq. de l'eſprit des loix, liv. II. c. 6). All that has been

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* Vol. II. p. 10. 1ſt edit.

† The exiſtence of perſonal ſlavery among the Saxons, may be conſidered as derogating from the truth of this aſſertion. But perſonal ſlavery prevailed in a greater extent in the Greek and Roman republics; and it ſubſiſts in the Britiſh Weſt India iſlands. In Europe it has principally yielded to the influence of Chriſtianity.

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done to *improve* this ſyſtem in modern times has been only to add ſtronger ſanctions to enforce it's beſt principles; but the great ſtruggles have always been, not for the *improvement* of the ſyſtem, but either for it's *preſervation* againſt attempts, of the princes on the throne, of the peerage, or of the people, to deſtroy the true balance of power and controul; or for the removal of abuſes which will happen in the execution of every government, and which principally ſpring from the imperfection of human nature, and the imperfection of all attempts of human wiſdom. Whatever alterations have been made in the courſe of ages, the broad baſis of our government, always has been, and ſtill is, purely Saxon.

The Norman conqueſt has been treated as a monſter which devoured every thing good in our Saxon conſtitution. Writers too often delight in ſtrong colouring. The Normans were, themſelves, of Saxon origin, and had taſted the ſweets of German freedom before they wreſted Neuſtria from the weakneſs of the Carlovingian kings. They had fled from the tyranny of Charlemagne to the northern ſhores of the Baltic, and they avenged their wrongs on his ſucceſſors. But in Neuſtria they found a people corrupted by the worſt of all tyranny, that of the Roman provincial government; they acquired the country by treaty which ſtipulated for the ſafety of the former inhabitants, who retained a great part of their poſſeſſions; and with theſe the Normans incorporated, and loſt their language in the union. The loſs of their language was not their only loſs. They ſuffered the corruption of the Roman government to pervade their own; and they added a conſiderable portion of the feudal ſyſtem, then prevailing in France, which, however, ſo far balanced the baneful effect of Roman inſtitutions as it checked the power of the prince. The government of

Normandy tho not purely German, was perhaps the beſt in France; and it was particularly remarkable for the due adminiſtration of law. The delegation of all the powers of juſtice from the crown to the principal land-holders within their reſpective territories, with the grants of other prerogatives of the crown, and the right aſſumed by the land-holders on the foundation of thoſe ceſſions to wage private war, were the bane of the greateſt part of France, and (except England) of almoſt all the countries in the weſtern parts of Europe. But the dukes of Normandy, governing with a ſteady hand, ſuffered no ſuch encroachments on their great duties of adminiſtering the law and preſerving the public peace, attributed to them on the ceſſion of the French monarch, and which can never with propriety be ſeparated from the executive power in a ſtate. The Normans therefore were accuſtomed to ſubmit to order; but they were not ſlaves. Their dukes could not execute the powers of government without controul, and particularly had no power of raiſing taxes, or making laws, without the conſent of the principal land-holders, who were in thoſe rude times almoſt the only perſons of property in weſtern Europe. Many of the eſtabliſhments for the interior adminiſtration of the Norman ſtate bore a ſtrong reſemblance to thoſe of the Anglo-Saxons, and the whole ſyſtem of their government, was not unfriendly to liberty, tho it did not breathe the full ſpirit of freedom which pervaded the Saxon monarchy.

To this country our Saxon anceſtors brought the inſtitutions of their forefathers, pure and uncorrupted, from their natve foreſts; they conquered after a ſtruggle of two hundred years, during which all traces of the Roman government

government were loſt, and the Britons were driven to the weſtern extremities of the iſland.

The Saxons therefore made a new nation in Britain, retaining the Saxon language, Saxon manners, and Saxon laws; and England in their poſſeſſion was truly German. Their ancient ſyſtem of government in their native wilds, was incompatible in ſome degree with their new ſituation; but they receded from it no farther than was neceſſary for the purpoſes of their eſtabliſhment; indeed not ſo far. For the vice of the Anglo-Saxon government at the Norman conqueſt was the prevalence of a democracy, which had degenerated into an oligarchy, and placed Harold on the throne; and perhaps an accurate inveſtigation of the ſubject will lead to the concluſion, that the effects of the Norman conqueſt probably preſerved the true balance of the conſtitution, and prevented the government from ſinking into ſuch a republic as the late republic of Poland.

In the adminiſtration of their government the two firſt Norman princes were indeed tyrants, tho of very oppoſite characters. So was James the ſecond; and yet few men will ſay that the *conſtitution* of our government under that prince was a *ſyſtem* of ſlavery. There is a great difference between the ſpirit of a conſtitution, and the ſpirit of thoſe who direct the powers of government. The laſt often is enabled, by extraordinary concurrence of circumſtances, to act in direct contradiction to the ſpirit of the conſtitution. Thus did James for near two years. But the ſpirit of the conſtitution at length prevailed.

William the Conqueror, and his ſon William Rufus, did not overturn the Saxon government; they expreſsly adopted it; but they engrafted upon it a portion of the feudal ſyſtem, and they oppreſſed it's ſpirit by the ſupe-

riority of their influence. That influence flowed from various ſources; but principally from their immenſe revenue, derived partly from the vaſt demeſne of the Saxon kings, long denominated "the ancient demeſne of the crown," partly from confiſcations, and reſervations upon grants of lands confiſcated, and partly from exactions. The ſituation, at the moment, of the laymen who compoſed the great council of the crown; or, as they are now termed the peers of the realm (for happily for us we have never had what in other countries of Europe is called a nobility, forming a diſtinct ſtate in the government) alſo contributed to give extraordinary influence to the crown. The Conqueror made their office hereditary, and their duties a ſervice attached to territorial poſſeſſions; and they acquired by the alteration that ſtability which has ſince enabled their body, on various occaſions, to hold the balance of the conſtitution. But they were chiefly Normans, looking to Normandy as their native country, doubtful of their Engliſh poſſeſſions, and apprehenſive that oppoſition to the exertion of power by the crown might become dangerous to their own eſtabliſhment. The death of the Conqueror ſeparated Normandy from England. The Norman-Engliſh were at firſt alarmed by the ſeparation; but they ſoon began to conſider England as their country, to look to it's conſtitution, examining it to admire it, and they became Engliſhmen, and delighted to be ſo called.

The oppreſſions of Rufus diſguſted all his ſubjects of every deſcription; his death was conſidered as a deliverance; and the Saxon and Norman-Engliſh alike contributed to raiſe Henry (born in England, and bred in Engliſh habits) to the throne, in preference to his elder brother. Conſcious to what he owed his crown, he ſought to conciliate the affections of the Engliſh by marrying

marrying a princeſs of Engliſh blood; and Normandy in the hands of his brother Robert was conſidered as a country hoſtile to England. At his acceſſion he promiſed to aboliſh the oppreſſions of his father and brother, and to obſerve the Saxon inſtitutions, ſo far as they had not been altered by general aſſent. If we notice what were then deemed the oppreſſions of the Conqueror and Rufus, we ſhall find they were arbitrary ſtretches of power, and not changes of the form of government; which remained, conſtitutionally, always nearly the ſame (except the hereditary quality given to the office of peer of the realm) tho in practice overwhelmed by the influence of the crown.

Each ſucceeding reign commenced with a ſtipulation for the due obſervance of the Saxon inſtitutions, which were the eſtabliſhed law of the realm; and under Henry the ſecond, the country generally flouriſhed in good government and internal peace.

The extravagance of Richard and his brother John, and the final ſeparation of Normandy from England in the reign of the latter, deſtroyed important ſources of royal influence. John became the penſioner of his people; and as their penſioner became ſubject to the laws of his country, which his weakneſs led him perpetually to infringe. His violence produced preciſe ſtipulations for the preſervation of the ancient conſtitution, and the liberties of the ſubject, by the great charter and charter of the foreſts. When he offered to violate his engagements, the indignation of the country called a foreign prince to the throne; but the death of John put an end to theſe diſturbances, and his infant ſon ſucceeded to the crown. To pave the way for this ſucceſſion, the friends of the young prince found that a promiſe of

ſtrict obſervance of the eſtabliſhed conſtitution was eſſentially neceſſary.

Henry the third was one of the weakeſt princes that ever ſat on the throne of England. Always in want of money, yet always infringing the liberties of his ſubjects; always bartering for confirmation of their rights, and always breaking his engagements; he at length excited a democratical ſpirit in the country, which tended to the introduction of ſuch reſtraints on the kingly power as amounted almoſt to the abolition of monarchical government, and the eſtabliſhment of an ariſtocratical tyranny in it's ſtead. The abilities of his ſon extricated him from his diſtreſs; he became ſo far wiſer by misfortune as to be deſirous of obtaining repoſe by forbearing to break the engagements he had made, and his days ended in peace.

At the cloſe of his reign, the conſtitution of the legiſlature, which had been gradually verging towards the form it now bears, and had been imperfectly modelled by the charter of John, was at length placed nearly on it's preſent eſtabliſhment; and ſo happily framed was the general machine of government, that altho Edward I. was at the death of his father in the holy land, and a year had elapſed before he arrived in England, yet all the powers of government were in the mean time duly adminiſtered under the ſanction of the permanent council of the crown, the lords ſpiritual and temporal, who acting in the king's name conducted in his abſence the whole buſineſs of the country.

Edward I. was one of the greateſt and wiſeſt of our princes. Experience had taught him the temper of his people, and the true conſtitution of their government. With ſome contention he ſubmitted to both; he reformed the abuſes of former times, and during his reign the conſtitution

ſtitution aſſumed that ſolidity which has enabled it to ſtruggle with and overcome all ſubſequent attempts to deſtroy it.

The reign of his ſucceſſor called the principles of the conſtitution into fatal action. Apprehenſion for their juſt rights led even the parliament to uſe the high tone of modern philoſophy with reſpect to the duties of governors, and the rights of the governed; and his people loudly and dreadfully taught him, that he was endowed with authority for their ſake.

The reign of Edward the 3d was able and brilliant; but the ſtriking paſſages of his parliamentary hiſtory, are the ſtrong attempts made to trench on the executive government in the adminiſtration of the public money, and appointment of public officers, to which his neceſſities ſometimes conſtrained him to yield. It is evident that Edward generally reigned proſperouſly and happily by ſeeking to acquire the confidence and good will of his people through a due obſervance of the conſtitution of their government; tho ſometimes deceived, and ſometimes led aſtray by his paſſions.

The minority of Richard 2d gave occaſion to the parliament to aſſume with effect their important character of council of the crown and of the nation. When he attained majority, his youthful years were full of extravagant attempts againſt the conſtitution, and his reign ſet in blood.

Henry the 4th was called to the throne by the voice of the people, to deliver them from attempts againſt their conſtitutional rights; and his ſucceſſion ſtrongly reſembled that of William and Mary upon the revolution in 1689. The reigning king had abuſed the powers intruſted to him; had avowed himſelf inimical to the eſtabliſhed laws; and the people to preſerve the conſtitution

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of their government from his attempts to deſtroy it, called to the throne another prince of the blood-royal, on whom the crown was ſettled by act of parliament. Henry, thus eſtabliſhed in power, to the prejudice of an elder branch of the royal family, was generally under the neceſſity of paying conſiderable deference to the will of his people. But the people were not aware of one effect of making the duke of Lancaſter their ſovereign. Heir of ſome of the moſt opulent families of the kingdom, he abſorbed in his perſon the influence of a great proportion of the peerage, and added it to the weight of the crown.

The brilliant career of Henry the fifth was ſpent in foreign conqueſt. His death, the ſucceſſion of his infant ſon, and the conduct of his brothers, called forth the ſpirit of the Engliſh government. In many points the true principles of the conſtitution are not even now better underſtood, tho perhaps more clearly and better expreſſed. The duke of Bedford's good ſenſe revered and ſubmitted to the government of his country; the duke of Glouceſter's ambition ſtruggled in vain againſt it, and reflection led him alſo to obedience.

Henry the ſixth, long an infant-king, always weak, and finally ſo diſordered in his intellect that he could not be produced even as the puppet of the ſhew, gave way to the aſcendency of the houſe of York, which was placed on the throne in the perſon of Edward the 4th; whoſe title, (to which the parliamentary ſettlement on Henry the 4th was the only objection) received the ſanction of a new parliamentary ſettlement.

The extinction of ſeveral noble families during the conteſt between the two houſes of York and Lancaſter, and the large acceſſion of influence derived from the addition of the vaſt eſtates of the York family, and the ſucceſſions of the ſeveral great names which it repreſented,

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to the immenſe property of the houſe of Lancaſter, which had been preſerved entire in the crown by the policy of Henry the 4th, would have made the power of Edward, towards the cloſe of his reign, almoſt irreſiſtable, if it had not been weakened by the extravagance of his expences.

The ſucceſſion of Richard the third on the depoſition of Edward the fifth, added to the royal demeſne the great property of the Warwick family, and left ſcarcely one opulent noble in the country. But the people abhorred his crimes, revolted againſt his uſurpation, and placed the earl of Richmond on the throne.

Henry the ſeventh united in his perſon all the territorial poſſeſſions of the houſes of York and Lancaſter, and the various families whoſe ſucceſſions they had inherited or acquired; and he added to the power which Edward the 4th had obtained by his great property, an economy to which Edward was a ſtranger. Henry was framed by nature for the quiet ſyſtematical eſtabliſhment of tyranny, and circumſtances favoured his exertions. The peers during his reign were ſo reduced as to be very inferior in number to the ſpiritual lords; and, excepting thoſe of his own creation, and the ſingle houſe of Buckingham which owed its renovation to his eſtabliſhment on the throne, there was ſcarcely a peer of conſiderable property. The lords thus humbled, the commons raiſed no head; and all bowed before the prince, who proceeded quietly and by degrees to eſtabliſh his tyranny by law.

He died before his purpoſe could be accompliſhed, and his ſucceſſor was of a character directly oppoſite; luxurious, extravagant, violent, and a ſtranger to wily policy. Henry the eighth ſoon diſſipated the immenſe treaſure of his father; he almoſt as ſoon ſquandered the vaſt property he had acquired by the diſſolution of monaſteries;

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and the change of religion in ſome degree ſhook his government. But the influence of the crown was ſtill enormous; the power which it had obtained by conceſſion of parliament was exceſſive; and Henry aimed at the aſſumption of power which he found had been attained by ſome princes on the continent. He had not, however, like his father, a ſettled ſyſtem of tyranny for the ſake of the crown; his views were confined to himſelf, and died with him.

The minority of Edward the ſixth undid many of the miſchiefs of the preceding reign; and altho the reign of Mary was generally a ſtretch of power, ſhe dared not go the lengths her father had done.

Elizabeth had the ſpirit of deſpotiſm; but ſhe ſucceeded by a doubtful title; and during her whole reign was compelled to ſeek the love of her ſubjects for her perſonal ſafety. She, or her counſellors, had the ſenſe alſo to perceive that the hour of arbitrary rule was paſſed; that the ſpirit of freedom had begun to riſe in effervеſcence with the ſpirit of fanaticiſm; and that it required great addreſs to keep down the maſs, and prevent it's overflowing, and bearing away all government. Yet ſhe drew from the religious zeal of her parliaments acts for the eſtabliſhment of extraordinary judicatures highly dangerous to the freedom of the country.

With her ended the houſe of Tudor, whoſe tyrannical eſtabliſhments, graced with the ſanction of the lawful legiſlature, (tho now all happily aboliſhed) did infinitely more injury to the conſtitution than the changes produced by the Norman conqueſt.

The folly of James, and the wretched policy of Charles the firſt, who madly endeavoured to renew the tyranny which the worſt of his predeceſſors had vainly attempted, or had been compelled to abjure, brought on the civil

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war which ended in the death of Charles, and the overthrow of the monarchy.

But the great baſis of the conſtitution, the internal adminiſtration of the government, remained. Even Cromwell dared not touch it; was compelled to reſpect it; frequently to ſubmit to it's controul; and on his death it's influence reſtored the monarchy.

The profligacy of Charles the ſecond kept him poor, dependent, and deſpiſed; but towards the cloſe of his reign deep laid plans of tyranny ſeemed to threaten the country with entire ſubjugation to arbitrary ſway, and James the ſecond thought they had paved his way to abſolute monarchy. He ſoon found that he and his counſellors had been very ſhort-ſighted; that they had not looked to the deep root of the conſtitution, and finding ſome of the branches withered, had miſtakenly imagined the tree was in decay. James was driven from the throne; and the prevalent party ſeated William and Mary in his place.

This revolution has been affectedly held out of late as a change in the principles of the conſtitution. The principles of the conſtitution were aſſerted, not changed; they remained as at the eſtabliſhment of the monarchy; and the leaders of the revolution, at the moment that they vindicated by it the true ſpirit of the ancient government, took great pains to declare that they held ſacred its principles: that the government of England was a monarchy; that the crown was hereditary; and that the lords and commons aſſembled in parliament were the council of the crown, and a controul on it's exertions of power, but formed no part of the executive government of the country, while the king remained on the throne, and the ſyſtem of the eſtabliſhed government continued entire.

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The foreſt law in England is of Saxon or Daniſh origin. The names of the inferior courts are Saxon; and the ſuppoſed creation of the foreſt, called the New-foreſt, by the firſt of the Norman kings, is a proof that other foreſts of the crown were then of indefinite antiquity. If therefore the laws of the foreſt can be deemed, under all the circumſtances which produced them, a ſyſtem of ſlavery, they derogate much from the glory of the Saxon inſtitutions. But cool inveſtigation of the ancient hiſtory, the ſtatutes, and the law-writers, on the ſubject, will probably induce the unprejudiced enquirer to think, that in the rude times in which their foundations were laid, the laws of the foreſt may be deemed part of a political ſyſtem for the internal quiet and benefit of the country; mixed indeed with the indulgence of the royal pleaſure, but in which the preſervation of the public peace and the growth of wood for the public ſervice, were alſo important objects. If he ſhould doubt the policy of the eſtabliſhment, he ſtill will not find in the eſtabliſhment itſelf principles ſo incompatible with a free conſtitution in the general government of the country, as the author of the *Obſervations on foreſt-ſcenery*, miſled by other writers, ſeems to have ſuppoſed.

The right of property is one of the moſt important conſequences of ſociety; and the law of property muſt be founded on the principles on which ſociety itſelf may be ſuppoſed to have been formed. By the law of England, perhaps by the law of every country in the world, and certainly by the law of the ancient Germans, the whole territory which forms the ſcite of the ſtate is deemed to have been originally the ſole property of the ſtate itſelf. Of this territory the principal part is conſidered as having been parcelled out by the ſtate among it's ſubjects, to be enjoyed by the grantees, and thoſe who according to the laws

laws of the country may derive title from them, ſubject to the conditions which the ſtate has impoſed on the enjoyment; but reverting to the ſtate if thoſe conditions are not obſerved, or if there ceaſe to be perſons who can derive title from the original grantees according to the eſtabliſhed law. Other parts of the territory, appropriated to the public uſe for roads and other purpoſes, remain, unqueſtionably, to every purpoſe, the property of the ſtate; and other parts, appropriated neither to any individual nor to any general uſe, remain alſo the property of the ſtate. The hiſtory of every country, perhaps, affords numerous illuſtrations of this doctrine. Among the Saxons in England, if the principle had been wanting to their German anceſtors (which hiſtory, and particularly the admirable ſketch of German manners and cuſtoms given by Tacitus, proves not to have been the caſe) it muſt inſtantly have occured, that what was obtained by the arms of all was the property of all; and that no individual could juſtly claim a ſhare of the conqueſt but ſubject to the public right. The principle is at this moment daily illuſtrated in the example of the ſtates of North America, where the unappropriated land is emphatically ſtiled the land of the ſtate within whoſe boundary it lies, and is ſubject to the diſpoſition of the ſtate.

In England the king is the ſole *repreſentative* of the ſtate; the Engliſh government being a *pure* monarchy, tho a *limited*, not an *abſolute* monarchy. All the powers of government are centered in the crown, legiſlative as well as executive; but to be exerciſed only within the bounds and under the controul which the conſtitution has eſtabliſhed. It is this purity of the monarchy which has given to the Engliſh government the ſolidity and force of an abſolute monarchy, while the controul impoſed upon it enſures to the people the full bleſſing of political and civil liberty.

liberty. And the inſtitutions which operate for the purpoſes of controul, being alſo calculated to compel the crown to action whenever it ought to be active and would otherwiſe remain quieſcent, and allowing full ſcope to the exertions of individuals for the general benefit, the alert ſpirit of a democratical government is united with the ſolid force of a monarchy.

The king being the ſole repreſentative of the ſtate, all the land in the country is deemed to have been originally the land of the crown; that is, of the ſtate: the land in the actual occupation of individuals is deemed to have been granted by the crown to the occupiers, or thoſe under whom they claim: and the land not granted to any perſon, but reſerved for roads or other public purpoſes, is alſo deemed the land of the crown ſubject to the public uſe. But beſide the grants to individuals, and the reſervation for general uſe, large tracts of land have been reſerved for the particular uſe of the crown, to anſwer it's ſeveral public and private purpoſes; and, among theſe, large tracts of woodland, which furniſhed timber for the navy and public buildings, and for the peculiar buildings of the crown; which ſupplied firing for the public and particular uſe of the crown; and harbored game for the amuſement of the king and his family in hunting. Theſe lands, ſubject to the demand for public uſe, have been deemed the ſole and excluſive property of the crown. Other lands, alſo, of great extent, formerly remained waſte, merely for want of cultivators; and of theſe the greateſt part had no owner but the crown.

The large tracts of land, thus variouſly deſcribed, with their timber and underwood, being the property of the crown, the beaſts and birds to which they gave ſhelter and food were alſo it's property. Some which were deemed delicacies of the table, or were the particular objects of amuſement,

amuſement in hunting, and therefore diſtinguiſhed by the appellation of game, became alſo the objects of the deſires of others, who were diſpoſed to take them for their own uſe without the leave of the crown. The laws which protected property in the cultivated parts of the country were not adapted to the preſervation of the rights of the crown in theſe wilds; and the coverts for game, afforded alſo ſhelter to outlaws and vagabonds. The preſervation of the public peace therefore required *ſome* law of foreſts. But acknowledging the neceſſity for *ſome* law, we may fairly enquire whether the eſtabliſhed law was well or ill formed; and particularly, for the preſent purpoſe, whether it was that horrid ſyſtem of abominable deſpotiſm which the author of Obſervations on Foreſt Scenery repreſents it to have been. For this purpoſe let us take a curſory view of it's moſt important parts.

The Daniſh monarchs in their own country were extravagantly fond of the chace. Canute, to whoſe mildneſs of government the quiet ſubmiſſion of the Saxons to his dominion has been frequently attributed, ſeems to have firſt reduced the laws of the foreſt in England to a ſyſtem; probably, eſtabliſhing regulations ſimilar to thoſe to which he had been accuſtomed in his native country. The conſtitutions attributed to Canute have come to us very incorrectly; but there ſeems no ground for imagining that they were the mere will of a deſpot, or framed by a different authority from that which gave ſanction to his laws for the ordinary purpoſes of juſtice. On the contrary, the conſtitutions are ſtated in the preamble to have been framed with the advice of his great men, for the ends of peace and juſtice.

The vaſt demeſne of the crown in thoſe days extended into all parts of the kingdom, and every county had great tracts of waſte lands belonging to the crown. The laws

of Canute therefore eſtabliſhed in each county four chief foreſters, who were gentlemen or thanes; *ex liberalioribus hominibus*: under each of whom were four yeomen or leſs thanes, *ex mediocribus hominibus*. The four inferior officers had the care of the vert and veniſon; but were in no ſort to interfere in the adminiſtration of juiſtce, altho in conſequence of their appointment they were thenceforth deemed thanes or gentlemen. Under each of theſe again were two officers, taken from men of ſtill lower rank, who had the care of the vert or veniſon in the night, and did the more ſervile works. But if any of theſe were before a ſlave, he became free by his appointment. All theſe officers had eſtabliſhed ſalaries and perquiſites, and enjoyed a variety of privileges and immunities; ſo that their appointments might be deemed very liberal. The two lower ranks were under the correction of the four chief foreſters, who were ſubject to the immediate authority of the king; or rather, it is to be preſumed, of his ſuperior court. For in the common language of the law of England the authority of the king in matters of juſtice means, not the perſonal authority of the prince on the throne, but the authority of his ſuperior courts of juſtice, reponſible for their acts to the people.

The chief foreſters had the royal juriſdiction within the foreſt, ſubject to the controul of the king, and held their courts four times in the year. The trials before them ſeem to have reſembled the modes of trial of thoſe times in other criminal caſes. The offences againſt the vert, merely, were lightly treated; thoſe againſt the veniſon more ſeverely; and diſtinction was made according to the rank and condition of the offender, between civil and criminal treſpaſſes, and between beaſts of the foreſt in general, and thoſe termed royal, which ſeem to have been only the ſtag. Chacing a beaſt of the foreſt expoſed all offenders

offenders to ſevere penalties, and killing to a forfeiture of double the value of the beaſt. Chacing a ſtag to penalties more ſevere; but killing this royal animal was ſo high an offence that by it a gentleman loſt his rank, a yeoman loſt his liberty, and a ſlave his life. Biſhops, abbots, and the king's barons (a term which, has been deemed evidence that the Latin example which we have of theſe conſtitutions is a tranſlation made after the conqueſt) were not to be impeached for merely hunting in the foreſt if they did not kill a royal beaſt, but for that offence they were fineable at the king's pleaſure. Felling or lopping the king's timber or underwood, without licenſe of one of the chief foreſters, was puniſhed by fine. A yeoman could not keep greyhounds near the foreſt; a gentleman might (within ten miles of the foreſt) if they were *lawed*. Dogs of other ſpecies, under the ſame reſtriction, might be kept by any perſon. *Lawing*, or *expeditation*, was a foreſt-term for diſqualifying a dog to exert ſuch ſpeed, as was neceſſary to take a deer. It was performed either by cutting out the ſole of his foot, or by taking off two of his claws by a chiſſel, and mallet. But if any dog treſpaſſed in the foreſt, the owner was ſubject to puniſhment, which, in caſe of the death of the ſtag, was ſevere. Canute by his general code of laws confirmed to his ſubjects full right to hunt in their own lands, provided they abſtained from the royal foreſts. But he ſeems to have been very jealous of the pleaſures of the chace.

Such were the laws of the foreſt eſtabliſhed by the Daniſh monarch; and it muſt be admitted that they were not mild. But the ſeverity of criminal law is not the diſtinguiſhing mark of deſpotiſm. It is too often the vice of a free government, where puniſhment can only follow clear demonſtration of guilt. Theſe laws were probably executed with ſome rigour during the reigns of Canute and

his ſons; but after the extinction of the Daniſh princes, during the weak and diſturbed reign of the Confeſſor, they were little obſerved; and the revival of their ſeverity by the Normans was therefore ſtrongly felt. In the ordinance of Canute we may, however, trace the foreſt-policy which prevailed under the Norman kings. The four chief officers under Canute are the four verderors of the Normans, ſtill choſen from the principal gentry of the country. The officers of the ſecond rank are the regarders; thoſe of the third the keepers; and the reſervation of controul in the crown is the origin of the office of chief juſticier of the foreſt, or juſtice in eyre of the preſent day.

The character of William the firſt has been drawn by a cotemporary writer, (annal. Wav. ann. 1087) who knew him perſonally, and had been ſometime in his court; and the draught has no marks of partiality. He is repreſented as a man of ſuperior underſtanding, rich, powerful, and magnifiſcent; ſubmiſſive to men of religion, and pious according to the ſuperſtition of the times; but haughty and ſevere to thoſe who oppoſed his will, and as little inclined to ſpare the higheſt as the loweſt. Rigid and exact in the adminiſtration of juſtice, and eſpecially in the preſervation of the public peace, and puniſhment of perſonal injuries of man to man. But he oppreſſed the country with extraordinary works, particularly in making fortifications; and he amaſſed wealth by every mean. He was paſſionately fond of hunting, and the tyranny of the foreſt is particularly aſcribed to him. He is ſaid to have ordained the loſs of eyes as the penalty for killing a ſtag, and to have prohibited taking boars and hares in the foreſt, which was permitted by Canute; and his nobility without diſtinction are repreſented as kept by him in the ſevereſt ſubjection.

Perhaps

Perhaps this portrait is highly coloured; but both the Conqueror and his ſon William Rufus appear to have ſuffered their paſſion for the chace to carry them to inordinate oppreſſion of their ſubjects. The latter, when he applied to the Engliſh for their aſſiſtance upon the general revolt of the Normans, promiſed to redreſs theſe grievances; but he never performed his promiſe. The memory of his tyranny was long preſerved with deteſtation and abhorrence; and the ſuperſtition of the times conſidered his death in the midſt of the chace as a judgment of heaven upon his iniquities.

Henry the firſt commenced his reign by a charter which promiſed relief from all the oppreſſions of his brother and father; but the laws attributed to him profeſs to retain the foreſts as his father had retained them, by conſent of his barons. From the charter of his ſucceſſor, however, it appears that the officers of Henry had aimed at extending the foreſts in a manner which excited great diſcontent. The pleas of the foreſt are particularly enumerated in his conſtitutions, and extended only to the ordinary ſubjects of foreſt juriſdiction at this day. Whatever oppreſſions, therefore, prevailed, were either illegal aſſumptions of power, or abuſes ariſing from miſconduct of the foreſt officers; except as the foreſt-law may at this day, ſo far as it is exerciſed, be deemed an oppreſſion, unleſs the original excluſive rights of the crown in the ſoil of the foreſts are attentively conſidered, and every treſpaſs on thoſe rights is deemed an injury to the property in the ſoil, which ſevere laws alone could protect. It ſhould be alſo remembered, that the property of the crown of every ſort (as a ſpecies of public property) is frequently conſidered, even by perſons of no mean rank, as under circumſtances ſo different from thoſe which belong to the private property of individuals, that men think they have

not the ſame intereſt in it's protection, or the ſame reaſon to forbear invading it, as they have with reſpect to the property of their fellow citizens; ſo that the property of the crown has been deemed almoſt a fair object of plunder.

During the reign of Henry the ſecond, a milder ſyſtem ſeems to have prevailed; and from the ordinances of Richard the firſt it is to be collected that the ſevere puniſhments for offences againſt the foreſt law were uſually redeemed by a fine. Richard reſtored the rigour of the law as it ſtood in the time of his great grandfather, by a ſtatute profeſſed to be made with the advice and conſent of the archbiſhops, biſhops, abbots, earls, barons, and knights of the whole kingdom. But it ſeems to have been, principally, rather a declaration of what the law was, tho relaxed in practice, than the enaction of a new law.

John, among his other extravagances, had ſtretched the foreſt law to the utmoſt; and was compelled to ſubmit to an explicit declaration of the rights of the crown and the ſubject in this reſpect, as well as in others. The proviſions of Canute extended to every county in the kingdom; but this had probably never been reduced to practice. The crown, however, claimed a right to aſcertain what parts of it's woods and waſtes were to be under the protection of the foreſt law. For this purpoſe a commiſſion iſſued under the great ſeal to perſons named by the crown to view the diſtrict intended to be afforeſted, to mark it's boundaries, and return the whole into the chancery, where the proceeding remained of record. A writ then iſſued to the ſheriff of the county to proclaim the fact, ſo that all the king's ſubjects might know the bounds of ſuch new foreſt; and officers of the foreſt were appointed according to the ſubſiſting laws on the ſubject. Under pretence of this prerogative, the preceding princes had greatly

greatly extended the foreſts to the prejudice of private perſons. It was therefore declared, that all lands afforeſted by Henry the firſt or Richard, except demeſne woods of the crown, ſhould be diſafforeſted; and various regulations were provided, reſpecting the woods of ſubjects within foreſts, the making the regard of the foreſt, lawing of dogs, and holding the ſwainmote courts; and it was expreſsly declared that no perſon ſhould loſe life or member for taking the king's deer. A perſon convicted of this offence was to pay a conſiderable fine; and if he could not pay it, was to be impriſoned for a year and a day, and find ſecurity for his good behaviour; and if he could not find ſuch ſecurity, he was to abjure the realm.

The regulations thus made were repeated in the reign of Henry the third, and at length fully ſubmitted to and confirmed by Edward the firſt. The wiſeſt of our kings have generally reſpected the free and equal ſpirit of our conſtitution as the baſis of juſt and permanent authority. The good government of the country, and the union of every part by a firm and regular policy, were principal objects of the ambition of Edward. He had experienced the evils ariſing from ariſtocratical tyranny, and from the turbulence of a democracy; and he aimed at preſerving that balance of power which ſhould keep the crown in it's juſt poiſe. To prevent diſputes on the extent of the king's foreſts, perambulations of the foreſts were required by the people, and ſubmitted to by the king. The boldneſs of offenders in foreſts chaces and warrens, and probably the diſpoſition of juries to find againſt thoſe who were appointed to keep ſuch places, had made it neceſſary to give protection to the keepers. By the ſtatute 21. Edward I. "de malefactoribus in parcis" it was ordained, that if

ſuch offenders, reſiſting the proper officers in the diſcharge of their duty, ſhould be killed, the officers ſhould be excuſed; but with an expreſs proviſion that if the officers, under pretence of diſcharging their duty, ſhould act maliciouſly, they ſhould be reſponſible for the conſequences. The ordinatio foreſtæ, made in the 34th Edward I. contains many beneficial regulations. The preamble takes notice that proceedings had been had in the foreſts, not by the lawful inqueſts of juries, as juſtice required, but upon the charges of one or two foreſters or verderors, from malice, or to extort money; and that the people had been oppreſſed by the number of foreſt officers, who were guilty at the ſame time, of converting to their own profit the king's wood and veniſon, committed to their cuſtody. The ordinance therefore provides that all treſpaſſes in the foreſts, of green-hue and of hunting, ſhould be preſented by the foreſters at the next ſwainmote, before the foreſters, verderors, and other officers; and upon ſuch preſentment the truth ſhould be enquired by a jury, and then the preſentment ſhould be ſealed by the common accord and aſſent of all the officers; and that an indictment in any other form ſhould be void. The appointment of officers was given to the juſtice of the foreſt, except the verderors who were to be elected by the freeholders of the county by the king's writ. At every ſwainmote, offences of officers of the foreſt, both againſt the king, and his ſubjects, were to be preſented and puniſhed; and upon indictments for treſpaſſes, authority was given to take fines without waiting for the eyre. Theſe proviſions were intended to enforce the obſervation of the ancient law, and particularly that offenders ſhould be charged only by the lawful inqueſt of juries, and tried by juries as for other offences; and ſhould not ſuffer either by the

the arbitrary conduct of foreſt officers, or by delay of juſtice.

It appears from the collection of ſtatutes of uncertain times, attributed to the reigns of Henry the third, or his ſon, or grandſon, that perſons attached for offences againſt the vert were to be attached by pledges only for the three firſt offences; but after a third offence a man might be attached by his body. If taken in the act of cutting down an oak a third time, an offender might alſo be attached by his body, tho for the ſame offence twice before committed he was to be attached by pledges only. This certainly was not a very ſevere law againſt a manifeſt theft. A perſon who took in a foreſt, without warrant, a beaſt of the foreſt, might be arreſted, and could be bailed only by the writ of the king or his juſtices, which is not more ſevere than the modern law againſt deer-ſtealers. Theſe regulations ſeem to have belonged to the reign of Henry the third.

In the firſt of Edward the third, an act was paſſed which recited the ſtatute of the 34th of Edward I. regulating indictments for treſpaſſes in the foreſts, and provided that thenceforth no man ſhould be taken or impriſoned for vert or veniſon, unleſs taken with the mainour, or indicted according to the act of Edward the firſt; and then the chief warden of the foreſt ſhould let him to mainpriſe till the eyre of the foreſt, without taking any thing for his deliverance; and if the warden would not do ſo, the priſoner ſhould have a writ out of the chancery, *which had been in old time ordained for perſons ſo charged*, to be at mainpriſe till the eyre; and if the warden, after receiving the writ, ſhould not immediately bail the priſoner, the priſoner ſhould have a writ out of the chancery to the ſheriff to attach the warden to anſwer in the king's bench for his refuſal; and the

ſheriff,

ſheriff, calling the verderors, ſhould bail the priſoner in their preſence. If the chief warden ſhould be convicted of improperly refuſing to bail the priſoner, treble damages were given to the perſon grieved, and the warden was to be further puniſhed by impriſonment and fine.

The old writ mentioned in this act appears in the ancient regiſter of writs; and it is to be collected from this ſtatute that in very diſtant times the laws of the country had anxiouſly provided in the caſe of perſons charged with offences of the foreſt, a particular remedy ſimilar to the writ of habeas corpus, ſtill conſidered as one great bulwark of our liberties.

In the ſame year the king confirmed the great charter of liberties and charter of the foreſt; and a ſtatute was made for keeping the perambulations of Edward the firſt, and ſupplying any deficiency in thoſe perambulations. It is obſervable that this ſtatute is the laſt parliamentary regulation of the bounds of the foreſt before the arbitrary conduct of Charles I. provoked a ſimilar act. Edward the third, always obliged to his ſubjects, and generally well diſpoſed to them, in the 43d year of his reign granted a general pardon of all offences of the foreſt.

In the reign of Richard the ſecond, the officers of the foreſt appear to have attempted improper means to influence the verdicts of juries; and it was therefore enacted, in the ſeventh year of this king, that no jury ſhould be compelled, by menace or otherwiſe, to give their verdict of treſpaſs done in the foreſt otherwiſe than their conſcience would clearly inform them; but that they ſhould give their verdict upon the matter wherewith they ſhould be charged, and in the place where they ſhould be charged. It was alſo provided that no man ſhould be taken or impriſoned by any officer of the

the foreſt without due indictment, or being taken with the mainour, or treſpaſſing in the foreſt; and double damages to the party grieved, and ranſom to the king, were the penalty for offending againſt this proviſion.

Here the regulations of the foreſt ſeem to have reſted for many years.

Under the Tudors, ſevere ſtatutes were enacted on many ſubjects; and hunting in the foreſts in the night with painted vizors was made felony by the firſt of Henry the ſeventh. But this was probably neceſſary for the peace of the country. Henry the eighth, toward the cloſe of his reign, procured the entering into a foreſt with intent to ſteal deer, to be made felony. This was repealed by his ſucceſſor, and Mary and Elizabeth ſhewed no diſpoſition to tyrannize through the means of foreſt law.

Charles the firſt, formed by nature for happier purpoſes, miſled by education, by prejudices, by paſſions, and by bad advice, during ſixteen years attempted, in various ways, to trample under his feet the rights and liberties of his ſubjects. All the tyrannies of the worſt of the Norman and Angevin princes before the acceſſion of Edward the firſt, though repeatedly diſavowed by that prince and the whole ſucceeding line of Plantagenet, were put in practice by Charles, were juſtified on the ſcore of ancient prerogative, and were attempted to be enforced by exertion of the vaſt ſtrength of *arbitrary juriſdiction* which the Tudor princes had drawn from their unwary or ſubmiſſive parliaments. The foreſt law had not been an object of the Tudors. Henry the ſeventh probably had not thought it a profitable mean of exaction, and Henry the eighth had no paſſion which it gratified. Theſe princes therefore had erected no ſtarchamber to inquire of offences againſt foreſt law; and Charles could only

only uſe for his purpoſe the ordinary courts of the foreſt. He ſummoned however all their powers to his aſſiſtance; and the hiſtory of the eyres made in his reign ſhews that thoſe powers might be oppreſſively exerted.

Treſpaſſes on waſtes cannot be prevented but by great attention. The firſt treſpaſſer is criminal—His act is a robbery—But if thoſe who ſhould puniſh it ſuffer it to remain, their forbearance gives confidence in his title. He is permitted to go to market with the fruit of his crime; and time having involved that crime in obſcurity, thoſe who ſucceed to his poſſeſſion cannot be deemed parties to it. To puniſh ſuch for having purchaſed what could not have been offered to ſale if thoſe who ought to have prevented the treſpaſs had done their duty, is the extreme of rigour.

" If 'tis our fault to give the people ſcope,
" It is our tyranny to ſtrike, and gall them
" For what we bid them do—For we bid this,
" Where evil deeds have their permiſſive paſs,
" And not their puniſhment."

But the object of Charles was not to puniſh the crime. It was principally to extort revenue independent of the grant of parliament; and for this purpoſe various ſchemes were ſuggeſted by his adviſers, and his ſubjects were tortured and oppreſſed, with little advantage to the royal coffers.

The patience which had ſuffered long was exhauſted; and Charles, after an attempt to reign without a parliament, was compelled to call the memorable aſſembly which at length uſurped all the powers of government, and put the king to death. Whilſt this parliament acted within due bounds, it paſſed, amongſt other regulations, a ſtatute of which the principal object was to give effect

to

to the laws of Edward I. and Edward III. concerning the bounds of the foreſts. The oppreſſions of Charles in the execution of the foreſt laws were tyrannies which did not require a formal act to declare them illegal.

Since the failure of this attempt, the royal prerogative in foreſts has not been uſed by the princes on the throne for oppreſſive purpoſes, altho individuals may have ſuffered from the miſbehaviour of foreſt officers, and perhaps from the general diſpoſition of little men in authority to ſhew their importance. The preſervation of the deer, and of the timber, has not been an object of much attention; and the neglect of the timber has been highly detrimental to the country.

The ſwainmote courts are ſtill regularly held in ſome of the foreſts, and particularly in the New-foreſt: but the eyres having been wholly diſuſed; it has been thought neceſſary to provide for the puniſhment of deer-ſtealing and wood-ſtealing by the ordinary juriſdictions of the country. Theſe puniſhments are ſevere; and ſeverer, perhaps, than the puniſhments preſcribed by the ancient laws of the foreſt; but not in general ſo ſevere as the puniſhments for other offences of the ſame degree of moral turpitude.

After this view of the riſe and progreſs of foreſt law, and its ſtate at various periods till it fell nearly into diſuſe by diſcontinuance of the eyres, we may venture to ſay that it does not merit all the odium which it has excited. To ſmugglers the revenue laws are odious: and perſons who reſided, in or near a foreſt, being frequently treſpaſſers; or encouraging for their amuſement, their indulgence, or their intereſt, the treſpaſſes of others; all became a ſort of contraband dealers, and caught the cry of the trade. It is not therefore ſurpriſing that the foreſt-law ſhould have been generally odious. The principal real grievance has generally been the illegal extenſion

extenſion of the bounds of the foreſts, and infringements of the rights of individuals within the bounds, through the intereſted zeal, and ſometimes the malice, of inferior officers, perverting the law to gratify their avarice or revenge.

The foreſt-law as it now ſtands, conſiſting of the proviſions of Canute modified by the Norman and early Angevin princes, and finally by Edward I. Edward III. and Richard II, is collected in Manwood's elaborate treatiſe; and there is a ſhort account of the foreſt courts and their proceedings in Blackſtone's commentaries vol. 3. c. 6. From theſe it will be eaſy to diſcover that the proceedings have fallen into diſuſe becauſe they were found to be in a great degree uſeleſs; "a rod more mocked than feared." They were enveloped in forms, and eaſily evaded; like a lawed dog, too mutilated to catch their game.

The liberality of modern times, affecting to tremble at a foreſt-court holden before verderors, gentlemen of the country, and (except coroners) the only judicial officers choſen by the people; at a court where the fact of guilt or innocence muſt be decided by a jury, of twelve men, freeholders of the foreſt, armed with every prejudice in favour of the ſuppoſed delinquent, and having, from the conſtitution of the court both law and fact generally in their hands; has rather choſen to truſt to a ſummary juriſdiction, before juſtices of the peace named by the crown, in which the ancient conſtitutional mode of trial by jury is forgotten. That ſummary juriſdiction became, perhaps, neceſſary, becauſe the foreſt juriſdiction was too weak to be effectual; but it ſeems the height of wantonneſs to impute the ſpirit of tyranny to an inſtitution which has fallen into diſuſe, principally becauſe, ſo far from being able to tyrannize, it has not been able to do what was eſſential to the preſervation of the peace and good order of the country.